



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Gusler et al.**

§

Serial No.: **09/439,054**

§ Group Art Unit: **2177**

Filed: **November 12, 1999**

§

Examiner: **Le, Debbie M.**

For: **Enhanced Backup and Recovery  
Methodology**

§

Attorney Docket No.: **AT9-99-234**

**RECEIVED**

**AFFIDAVIT**

OCT 23 2003

Technology Center 2100

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Krista Douthitt, being of sound mind and legal age, and fully aware of the punishable nature of making untrue statements as Affiant herein, do hereby attest to personal knowledge of the following:

I am employed by the law firm of Carstens, Yee & Cahoon, L.L.P. (the "Firm"), as a Paralegal, in which capacity I personally receive all client related materials requiring further action and docketing on behalf of the Firm and IBM Corporation (the "Client").

On the mailing date of the Office Action in question, July 31, 2002, I was employed full time by the Firm and have no record of receipt of said Office Action. On October 3, 2003, the Firm received a Notice of Abandonment informing applicant that the application had become abandoned due to failure to timely file a proper reply to the Office letter mailed on July 31, 2002. At that time, I immediately contacted the Client to inform them of this situation and to ask if they had received a copy of the Office Action instead. They notified me that they had not received the Office Action.

When a Notice of Abandonment is received, I review the file and contact the Client to decide how to proceed. If the Client wishes to proceed with abandoning the case, I make a note to that and close out the case in our system. If the Client does not wish to proceed with abandoning the case, I proceed with the proper paperwork to withhold. The docketing system the Firm uses does not have a specific place to enter when a Notice of Abandonment is received, which is why it does not appear on the Case History Report attached hereto. The Notice of Abandonment is listed on the case index of the case file, as shown on the attached index for this particular case.

Sworn to and attested as follows at Dallas, Texas on Thursday, October 16, 2003:

AFFIANT:

Krista Douthitt

Krista Douthitt

On this the 16th day of October, 2003, personally appeared before me Krista Douthitt, to me known to be the person named in and who executed the above instrument, and acknowledged that she executed the same for the uses and purposes therein mentioned.

Rebecca L. Clayton  
Notary Public  
My commission expires: April 14, 2007

(seal)

